

**SHAMIS & GENTILE, P.A.**

Joshua Moyer, Esq. (CA Bar No. 259908)  
401 W A Street, Suite 200  
San Diego, CA 92101  
Telephone: 305-479-2299  
jmoyer@shamisgentile.com

**EDELSBERG LAW, P.A.**

Scott Edelsberg, Esq. (CA Bar No. 330990)  
1925 Century Park E #1700  
Los Angeles, CA 90067  
Telephone: 305-975-3320  
scott@edelsberglaw.com

*Counsel for Plaintiff and Proposed Class*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

LIZETTE VELEZ,  
individually and on behalf of all others  
similarly situated,

*Plaintiff,*

vs.

PRO GENITOR d/b/a FLYT  
DELIVERY, a California corporation,

*Defendant.*

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT, 47 U.S.C. §§ 227, ET SEQ.  
(TCPA)**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1  
2 1. Plaintiff, Lizette Velez, brings this action against Defendant, Pro Genitor  
3 d/b/a Flyt Delivery, to secure redress for violations of the Telephone Consumer  
4 Protection Act (“TCPA”), 47 U.S.C. § 227.

**NATURE OF THE ACTION**

5  
6 2. This is a putative class action pursuant to the Telephone Consumer  
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is a cannabis dispensary and delivery company. To promote its  
9 services, Defendant engages in aggressive unsolicited marketing, harming thousands of  
10 consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s  
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,  
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory  
14 damages on behalf of herself and members of the Class, and any other available legal  
15 or equitable remedies.

**JURISDICTION AND VENUE**

16  
17 5. This Court has federal question subject matter jurisdiction over this action  
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer  
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper  
21 in this District because Defendant directs, markets, and provides its business activities  
22 to this District, and because Defendant’s unauthorized marketing scheme was directed  
23 by Defendant to consumers in this District, including Plaintiff.

**PARTIES**

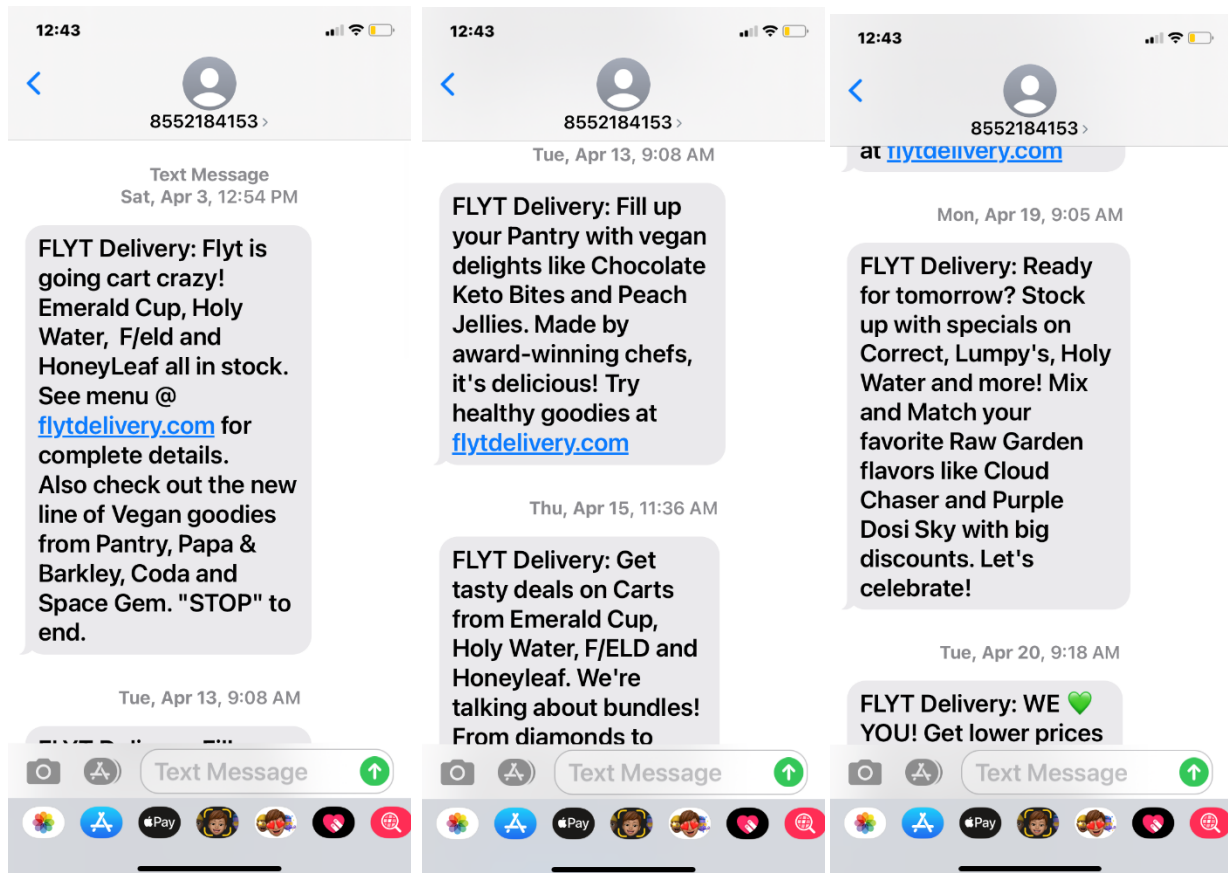
24  
25 7. Plaintiff is a natural person who, at all times relevant to this action, was a  
26 resident of Alameda County, California.

8. Defendant is a California corporation whose principal office is located at 1035 22<sup>nd</sup> Avenue, Unit 18, Oakland, California 94606. Defendant directs, markets, and provides its business activities throughout the United States, including throughout the state of California.

9. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

### **FACTUAL ALLEGATIONS**

10. Beginning on or about April 3, 2021, Defendant sent numerous telemarketing text messages to Plaintiff's cellular telephone number ending in 2608 (the "2608 Number"):





21. Defendant's unsolicited text messages caused Plaintiff actual harm, including invasion of her privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and caused disruption to her daily life.

### **CLASS ALLEGATIONS**

#### **PROPOSED CLASS**

22. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated.

23. Plaintiff brings this case on behalf of the Class defined as follows:

**Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action (1) were sent a text message by or on behalf of Defendant; (2) more than one time within any 12-month period; (3) where the person's telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Defendant's products and services; and (5) for whom Defendant claims (a) it did not obtain prior express written consent, or (b) it obtained prior express written consent in the same manner as Defendant claims it supposedly obtained prior express written consent to call the Plaintiff.**

24. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class but believes the Class members number in the several thousands, if not more.

#### **NUMEROSITY**

25. Upon information and belief, Defendant has placed violative calls to cellular telephone numbers belonging to thousands of consumers throughout the United States who are registered on the Do Not Call registry. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

26. The exact number and identities of the members of the Class are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

**COMMON QUESTIONS OF LAW AND FACT**

27. There are numerous questions of law and fact common to members of the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the members of the Class are:

- a) Whether Defendant violated 47 C.F.R. § 64.1200(c);
- b) Whether Defendant's conduct was knowing and willful;
- c) Whether Defendant violated the privacy rights of Plaintiff and members of the class;
- d) Whether Defendant is liable for damages, and the amount of such damages; and
- e) Whether Defendant should be enjoined from such conduct in the future.

28. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits text messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

**TYPICALITY**

29. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

**PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

30. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is

an adequate representative and will fairly and adequately protect the interests of the Class.

**PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

31. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

32. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

**COUNT I**

**Violation of the TCPA, 47 U.S.C. § 227**

**(On Behalf of Plaintiff and the Do Not Call Registry Class)**

33. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

34. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."



35. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”<sup>1</sup>

36. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.”

37. Any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

38. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

39. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

---

<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)



40. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of actual and statutory damages for Plaintiff and each member of the Class;
- c) An order declaring that Defendant's actions, set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited text messaging activity, and to otherwise protect the interests of the Class;
- e) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and
- f) Such further and other relief as the Court deems necessary.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

**DOCUMENT PRESERVATION DEMAND**

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: June 1, 2021

Respectfully submitted,

By: /s/ Joshua Moyer

**SHAMIS & GENTILE. P.A.**

Joshua Moyer, Esq. (CA Bar No. 259908)  
401 W A Street, Suite 200  
San Diego, CA 92101  
Telephone: 305-479-2299  
jmoyer@shamisgentile.com

**EDELSBERG LAW, P.A.**

Scott Edelsberg, Esq. (CA Bar No. 330990)  
1925 Century Park E #1700  
Los Angeles, CA 90067  
Telephone: 305-975-3320  
scott@edelsberglaw.com

*Counsel for Plaintiff and the Proposed Class*